

**SPEED POST**



F. NO. 198/04/2021-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6th FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 04/03/22

Order No. 12/2022-CX dated 04-03-2022 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 51/CEX/RKL-GST/2019 dated 15.12.2020 passed by the Commissioner (Appeals), GST, Central Excise & Customs, Bhubaneswar.

Applicant : The Commissioner of CGST & Central Excise, Rourkela.

Respondent : M/s Jindal Steel & Power Ltd., Angul.

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**ORDER**

A revision application no. 198/04/2021-R.A. dated 18.03.2021 has been filed by the Commissioner of CGST & Central Excise, Rourkela (hereinafter referred to as the Applicant) against the Order-in-Appeal no. 51/CEX/RKL-GST/2019 dated 15.12.2020 passed by the Commissioner (Appeals), GST, Central Excise & Customs, Bhubaneswar. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, set aside the Order-in-Original No. AC/AGL/REFUND/55/2019 dated 23.08.2019 passed by the Assistant Commissioner, CGST & Central Excise, Angul in the matter of M/s Jindal Steel & Power Ltd., Angul (hereinafter referred to as the Respondent) confirming the demand of Rs. 4,23,89,327/- alongwith applicable interest under Section 11A of the Central Excise Act, 1944 and also imposed a penalty of Rs. 4,23,89,327/- under Section 11AC of the Act, *ibid*.

2. Briefly stated, the Respondent herein exported final products on payment of Central Excise duty of Rs. 69,98,64,638/-, during the period 01.01.2017 to 31.03.2017, and claimed rebate, vide application dated 14.08.2017, under Rule 18 of the Central Excise Rules, 2002. The original authority, vide Order-in-Original No. 24/C.Ex.Rebate/R/AGL/2017 dated 10.10.2017 sanctioned the entire amount as rebate. The aforesaid Order-in-Original dated 10.10.2017 was reviewed by the Applicant department on the ground that duty was paid on C&F value basis instead of the FOB value basis and, therefore, the rebate should be sanctioned in cash only to the extent of duty payable on FOB value basis whereas excess duty paid over and above the FOB value basis should be refunded in the manner it was paid, i.e., by re-credit in the Cenvat Credit Account. In the appeal filed by the Applicant department, consequently, the Commissioner (Appeals), vide Order-in-Appeal No. 101/CE/RKL-GST/2018 dated 30.10.2018, held that the amount of Rs. 4,23,89,327/- was erroneously sanctioned to the Respondent herein in cash instead of the re-credit in the Cenvat Account and, accordingly, set aside the Order-in-Original dated 10.10.2017. In the meantime, a show cause notice dated 31.08.2018 was issued to the Respondents herein proposing the demand of erroneously refunded amount Rs. 4,23,89,327/-, in cash. Pursuant to the Order-in-Appeal dated 30.10.2018, the show cause notice dated 31.18.2018 was adjudicated by the original authority, vide the aforesaid Order-in-Original dated 23.08.2019, confirming the demand alongwith

interest. Equal amount of penalty was also imposed under Section 11AC. The appeal filed by the Respondents herein was allowed by the Commissioner (Appeals), vide the impugned Order-in-Appeal dated 15.12.2020.

3. The revision application has been filed, mainly, on the grounds that it is settled law that the rebate of duty is available only in respect of duty paid on FOB value and not any value over and above the FOB value; that additional amount of Rs. 4,23,89,327/- sanctioned erroneously by the original authority was to be allowed not as a amount of refund but as a reversal entry because refund/rebate is not admissible; that as per Section 142 (3) of the CGST Act, 2017, every claim for refund filed after the appointed date, i.e. 01.07.2017, shall be disposed off in accordance with the provisions of existing law and any amount eventually accruing to the Applicant shall be paid in cash; that Commissioner (Appeals) has erred in applying the aforesaid Section 142 (3) since the disputed amount involved herein relates to the re-credit and not to refund and, as such, the same has to lapse. A Written Reply dated 22.05.2021 has been filed by the Respondents.

4. Personal hearings in the matter were fixed on 27.12.2021, 07.01.2022, 31.01.2022, 16.02.2022 & 25.02.2022. No one appeared for the Applicant department, on any of the dates, nor any request for adjournment has been received. The personal hearings held on 07.01.2022 and 31.01.2022 were attended by Ms. Tuhina Sinha, Advocate & Ms. Neha Gulati, Authorised Representative on behalf of the Respondent. In the personal hearing held, in virtual mode, on 31.01.2022, Ms. Tuhina Sinha, Advocate reiterated the contents of the Written Reply dated 22.05.2021. In the hearing held, in virtual mode, on 16.02.2022, it was pointed out to the Respondents that the demand of erroneous refund/rebate has been confirmed by the original authority, in the present case, pursuant to the OIA dated 31.10.2018. This OIA dated 31.10.2018 was not challenged by the Respondents and hence it has attained finality. Therefore, the confirmation of demand in dispute appeared to be only consequential. Ms. Tuhina Sinha, Advocate, in response, requested for one week time to make submissions in this regard. She also requested that the matter may be heard thereafter. Accordingly, PH was held on 25.02.2022, in virtual mode. Sh. Vishal Agarwal, Advocate appeared for the

Respondents and reiterated the contents of the RA as well as the Written Submissions dated 16.02.2022 & 24.02.2022. Additional Written Submissions have been filed by the Respondents on 16.02.2022 & 24.02.2022, wherein it is, inter-alia, contended that:

- (i) In the operative part of his Order dated 31.10.2018, the Commissioner (Appeals) has set aside the OIO dated 10.10.2017. At the same time, in the preceding para of the very same Order, the Commissioner (Appeals) has held that the amount of Rs. 4,23,89,327/- is not refundable in cash but by way of re-credit. Therefore, reading the OIA dated 31.10.2018, as a whole, it only set aside the OIO dated 10.10.2017 to the extent it allowed the same amount to be refunded in cash.
- (ii) The department has not even raised this plea in the subject revision application.

5. The Government has carefully examined the matter. Indubitably, the duty in the instant case was paid on C&F value basis and the rebate was claimed as well as originally sanctioned, accordingly. It is also not disputed that the Central Excise duty ought to have been paid on FOB value basis and, accordingly, differential amount, i.e., the duty over and above the duty payable on FOB value basis ought to have been refunded by way of re-credit in the Cenvat Credit Account, i.e., the account from which it was originally paid. The contention of the Applicant department is that the differential amount does not represent duty and, therefore, the present case does not relate to refund claim covered by Section 142(3) of the CGST Act, 2017 which enables payment of any refund claim filed after 01.07.2017, in cash, notwithstanding anything to the contrary contained under the provisions of existing law, i.e., the Central Excise Act, 1944.

6. The Government observes that the present contention of the Applicant department is at variance with the contentions made in the appeal filed by them before the Commissioner (Appeals) which resulted in the Order-in-Appeal dated 30.10.2018. In the appeal memorandum dated 02.02.2018 filed by the Applicant department before the Commissioner (Appeals), following is stated:

"5. That, as above discussed, duty is payable on the value in terms of Section 4 should be the amount that the buyer of the exported goods is liable to pay and accordingly, rebate of such duty is to be sanctioned and paid in cash. And the excess duty paid if any in case of duty paid on CIF values, such amount of duty paid on export may be refunded in the manner in which it was paid (i.e. to be refunded by allowing to take back the credit)." (emphasis supplied).


The Commissioner (Appeals) has also in the Order-in-Appeal dated 30.10.2018 clearly held "8. ....that refund of duty of Rs. 4,23,89,327/- on Overseas Freight value of Rs. 33,91,14,613/- has been erroneously sanctioned to the respondent in cash instead of re-crediting to their CENVAT Account, I hold that the Adjudicating Authority has sanctioned the rebate of Rs. 4,23,89,327/- beyond the prescribed law. Therefore, I hold that the impugned order is liable to be set aside." Thus, it was the clear contention of the department before the Commissioner (Appeals) that the differential amount should be refunded by way of re-credit instead of cash and the Commissioner (Appeals) has also, accordingly, held in favour of the department. The Order of Commissioner (Appeals) has attained finality and it is now not open to the department to contend otherwise. Even otherwise, it is settled law that the duty not payable cannot be retained by the Government and it has to be refunded to the person who has paid.

7. The Commissioner (Appeals) has vide impugned Order-in-Appeal relying upon Section 142(3) of the CGST Act, 2017 held that since the application for rebate was filed after the appointed date, i.e., 01.07.2017, the amount which earlier would have been allowed to be refunded by way of re-credit, should now be refunded in cash as per the provisions of said Section 142(3). The Government observes that the view taken by the Commissioner (Appeals) is in line with the judgment of the Hon'ble Gujarat High Court in the case of Thermax Ltd. vs. UOI {2019 (31) GSTL 60 (Guj.)}. In the case of Thermax Ltd., the rebate claim was filed in respect of exported goods where duty ought not have been paid. The Hon'ble High Court after examining the provisions of Section 142(3) held as under:

"10. It is thus eminently clear from the aforesaid observations made in the impugned order that the duty, which was paid by the petitioner, which was otherwise not payable on the exported goods and therefore, rebate of such duty was not

*admissible in terms of Rule 18 of the Central Excise Rules. However, the duty, which was paid by the petitioner is held to be treated as voluntary deposit. As per Section 142(3) of the GST Act, every claim for the refund filed by any person before, on or after the appointed day i.e. 1-7-2017 for refund of any amount of Cenvat credit, duty, tax, interest or any other amount paid under the existing law, should be disposed of in accordance with the provisions of existing law and any amount eventually accruing to such person should be paid in cash. We are of the considered opinion that in view of this clear provision, the Respondent No. 2 ought to have directed the sanctioning Authority to refund the amount of duty refundable to the petitioner in cash instead of credit in Cenvat Account."*

8. In view of the above, the Government does not find any infirmity in the impugned Order-in-Appeal. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of CGST & Central Excise,  
Rourkela Commissionerate, KK-42,  
Civil Township, Rourkela – 769012.

G.O.I. Order No. 12/22-CX dated 04-03-2022

Copy to: -

1. M/s Jindal Steel & Power Ltd., SH-63, Chhendipada Road, Vill.- Nisha, Jindal Nagar, Angul – 759111.
2. The Commissioner (Appeals), CGST, Central Excise & Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar, Odisha – 751007.
3. Ms. Tuhina Sinha, Advocate, Ms. Neha Gulati, Advocate & Sh. Vishal Agrawal, Advocate, M/s TLC Legal Advocates, 7<sup>th</sup> Floor, Mohan Dev Building, Tolstoy Marg, Connaught Place, New Delhi – 110001.
4. P.S. to A.S. (Revision Application).
- ✓ 5. Guard File.
6. Spare Copy.

ATTESTED



(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi